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(c) Where there is an adjoining retail store operated by the manufacturer tobacco products including any doors or other openings between the premises.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6840, 30 FR 9310, July 27, 1965, as amended by T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

§ 40.70 Separation of and access to factory.

Where the factory consists of a portion of a building, or where portions of buildings are part of the factory, the factory shall be completely separated by walls from adjoining portions of the building. Such walls shall be securely constructed of substantial materials. The appropriate TTB officer may, wherever he finds that the revenue will not be jeopardized, authorize openings and doors in such walls or means of separation other than walls if such means adequately delineate the factory. The factory shall be accessible directly from a street, yard, common passageway, or other common means of entrance.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 40.71 Factories established prior to October 1, 1961.

Factories established prior to the effective date of this part, October 1, 1961, shall not be subject to the provisions of § 40.70 if, in the opinion of the appropriate TTB officer, the existing premises afford adequate protection to the revenue.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 40.72 Use of factory premises.

(a) *General.* Unless otherwise authorized by the appropriate TTB officer as provided in § 40.47, the premises used by a manufacturer of tobacco products for his factory shall be used exclusively for the purposes of manufacturing and storing tobacco products; storing materials, equipment, and supplies related thereto or used or useful in the conduct of the business; and carrying on activi-

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ties in connection with business of the manufacturer of tobacco products.

(b) *Manufacturers who process tobacco.*

(1) A manufacturer of tobacco products who processes tobacco on the factory premises solely for use in the manufacture of tobacco products under that permit, who does not remove processed tobacco from the factory premises for any purpose other than destruction, and who maintains adequate records with respect to the disposition of the processed tobacco in accordance with § 40.182, may engage in such operations under the authority of its existing permit on the factory premises and without application for such authorization from TTB. If any of these conditions is not met, the manufacturer must, in order to engage in the processing of tobacco under the existing permit, obtain authorization from TTB in accordance with § 40.47, and must keep records and submit reports as prescribed in §§ 40.521 and 40.522.

(2) A manufacturer of tobacco products who removes processed tobacco from the factory premises for any purpose other than destruction must obtain authorization of that activity from TTB in accordance with § 40.47 and must keep records and submit reports as prescribed in §§ 40.521 and 40.522.

EFFECTIVE DATE NOTE: By T.D. TTB-78, at 74 FR 29409, June 22, 2009, § 40.72 was revised, effective June 22, 2009 through June 22, 2012.

§ 40.73 Additional information.

The appropriate TTB officer may require such additional information as he may deem necessary to determine whether the applicant is entitled to a permit under the provisions of this part. The applicant shall, when required by the appropriate TTB officer, furnish as a part of his application for such permit such additional information as may be necessary for the appropriate TTB officer to determine whether the applicant is entitled to a permit.

§ 40.74 Investigation of applicant.

(a) *Investigation.* The appropriate TTB officer may cause inquiry or investigation to be made to verify the information furnished in connection with an application for permit and to ascertain whether the applicant is eligible

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for a permit. Any of the following conditions may be grounds for denial of a permit:

(1) The premises on which it is proposed to conduct the business are not adequate to protect the revenue;

(2) The activity proposed to be carried out at such premises does not meet the minimum manufacturing or activity requirements of § 40.61(b); or

(3) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)—

(i) Is, by reason of his business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter;

(ii) Has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes; or

(iii) Has failed to disclose any material information required or made any material false statement in the application therefor.

(b) *TTB action.* The appropriate TTB officer, if there is reason to believe that the applicant is not entitled to a permit, shall promptly give the applicant notice of the contemplated disapproval of the application and opportunity for hearing thereon in accordance with part 71 of this chapter, which part (including the provisions relating to the recommended decision and to appeals) is applicable to such proceedings. If, after such notice and opportunity for hearing, the appropriate TTB officer finds that the applicant is not entitled to a permit, he shall, by order stating the findings on which his decision is based, deny the permit.

(26 U.S.C. 5712)

[T.D. TTB-75, 74 FR 14482, Mar. 31, 2009]

§ 40.75 Issuance of permit.

If the application for permit, together with the bond and supporting documents, required under this part is approved by him, the appropriate TTB

officer shall issue a permit on Form 2096 to the applicant as a manufacturer of tobacco products.

(72 Stat. 1421; 26 U.S.C. 5713)

[T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 40.76 Retention of permit and supporting documents.

The manufacturer shall retain his permit, together with the copy of the application and supporting documents returned to him with the permit, at the same place where the records required by this part are kept and they shall be made available for inspection by any appropriate TTB officer upon his request.

(72 Stat. 1421, 1423; 26 U.S.C. 5712, 5713, 5741)

Subpart F—Changes After Original Qualification of Manufacturers of Tobacco Products

CHANGES IN NAME

§ 40.91 Change in individual name.

Where there is a change in the name of an individual operating as a manufacturer, of tobacco products he shall, within 30 days of such change, make application on Form 2098 for an amended permit.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 40.92 Change in trade name.

Where there is a change in, or an addition or discontinuance of, a trade name used by a manufacturer of tobacco products in connection with operations authorized by his permit the manufacturer shall, within 30 days of such change, addition or discontinuance, make application on Form 2098 for an amended permit to reflect such change. The manufacturer shall also furnish a true copy of any new trade name certificate or document issued to him, or statement in lieu thereof, required by § 40.65.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6840, 30 FR 9311, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975]